Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Part II, "Modern Observations of Retarded Peoples," covers Australians, Eskimos, American Indians, Kafirs, and the Fanti of the Gold Coast. Part III contains in whole or in long and well-chosen extracts, Ancient Accadian Laws, Hammurabi, the Edict of Harmhab (Egyptian), the Laws of Gortyn, the Twelve Tables, Manu, the Salic Law, Ethelbert's Dooms, the Laws of Howel Dda. Part IV, "Ancient and Primitive Legal Transactions," contains trials, procedural formulæ, and accounts of the course of litigation from Egypt, Babylon, Greece (Demosthenes), Rome (Cicero and Gaius), and the Germanic peoples, followed by Egyptian, Babylonian and Assyrian documents.

The second volume, intended to be used with the first, is made up of extracts from writers on the history and philosophy of law and of social institutions. In the introductory chapter, Kohler on the evolution of law and Post on ethnological jurisprudence are followed by Tarde's theory of imitation and a critique thereof by Girard, and these by Del Vecchio's well-known "Universal Comparative Law," now translated into a fifth language. Part I, "Law and the State," has chapters on Forms of Social Organization, Evolution of the State, Omnipotence of the Ancient State, Chieftaincy and Kingship, Religion and Law, Evolution of Criminal Law, The Forms of Law, and Methods of the Law's Growth, with extracts, among others, from Kohler, Fustel de Coulanges, and Maine. Part II, "Persons," has twelve chapters, covering the beginnings of family law, slavery, and the Roman impairment of civil personality and loss of civic honor. Part III, "Things," has ten chapters, dealing with property, the origin of commercial institutions, primitive commercial law, barter and transfer, pledge, suretyship, the evolution of contract, sales and loans at Rome, interest, and succession. Part IV is made up of extracts from writers upon the history and evolution of procedure and the procedure of primitive or archaic law.

Much of the translation has had to be done by the compilers themselves, and in view of this burden, added to the difficult task of selection and compilation, not at random, but with a clear purpose and according to a matured plan, these volumes are indeed a notable achievement.

ROSCOE POUND.

VOTING TRUSTS. By Harry A. Cushing. New York: The Macmillan Company. 1915. pp. 226.

This is a book on a modern development of corporate law written by one who shows an intimate acquaintance with present commercial methods and with recent history of corporate management. Mr. Cushing's literary style is excellent, his citation of authorities is exhaustive, and he has given in compact form a clear and illuminating statement of the law of voting trusts not elsewhere to be found.

A discussion of this subject, Mr. Cushing says, in a period when not only concentration of property, but even combinations of mere influence have been subjected to severe criticism, naturally suggests a justification of what some still regard as an innovation of slight utility and of doubtful propriety. Such, however, the author considers hardly more appropriate than a defense of corporate organization itself and, he adds, "no other detail of corporate organization is so peculiarly the result of recent experience or more distinctive of the modern theory and practice in the correct reconstruction of corporate business" — a comment which derives considerable support from the recent decree of the federal court in the New Haven Railroad "dissolution" case, to which Mr. Cushing refers, by which three sets of voting trustees were created, each consisting of five members, who were made "officers of this court" for the purpose of carrying the decree into effect (p. 10). In some states voting trusts are

approved by statute (p. 94). In others they are supported by decisions of the courts, and their operation has secured to many corporations stability and continuity of policy and certainty of responsible management. "These substantial advantages outweigh the criticisms to which voting trusts have been subjected, and it is not to be expected that these advantages can be successfully ignored" (p. 99).

To the objection based on public policy that an elector may not separate voting power from beneficial interest Mr. Cushing gives but short shrift. Executors and trustees often have no beneficial interest in the stock upon which they vote; pledgees may have but slight interest; nominal owners in whose name stock stands have no interest at all and proxy holders need have neither interest nor nominal title. The separation of voting power and interest, Mr. Cushing argues, is therefore not the test of validity. "Even the cases holding the particular agreements then under consideration to be invalid, usually recognize the proposition that there may be a valid voting trust." *Bowditch* v. *Jackson Co.*, 76 N. H. 351 (1912). "Such agreements are not invalid *per se.* Their validity depends on the purposes they are designed to serve." *Thompson-Starrett Co.* v. *Granite Co.*, 86 Vt. 282 (1912). So Mr. Justice Holmes, speaking as Chief Justice for the Supreme Court of Massachusetts, said: "We know nothing in the policy of our law to prevent a majority of stockholders from transferring their stock to a trustee with unrestricted power to vote upon it." *Brightman* v. *Bates*, 175 Mass. 105 (1900).

These authorities present an interesting aspect of the workings of democracy which can be observed on a far wider stage than that of corporate law, but which can nevertheless well be studied in the management of corporations, for when so observed they are free from complexities and prejudices which in public affairs often prevent an unbiased conclusion.

The first and most important consequence of equality among citizens, Rousseau says, is that only the general will can direct the forces of the state according to the general good; for if the opposition of individual interests has rendered the establishment of societies necessary, it is the accord of these interests which has rendered it possible. It is thus solely through these common interests that society should be governed. When by the constitution of society the interest of each elector is directed toward the common interest the pyramid stands on its base. This is democracy.

A great difficulty with this form of government lies in the easy organization of majorities and the administration of public affairs for the benefit of the ruling organization. Nor does this process cease with the first step, for the ruling majority is itself subject to the same parasitic growth and this system has at times been carried so far that the governments of cities and states have often been subject to the will of a single individual. In public affairs this is control by the party machine, or unseen government as it is sometimes called — in Burke's phrase the union of the forms of a free with the ends of an arbitrary government. In corporate affairs this is the holding company or other combination of votes. In both fields the phenomena illustrate Rousseau's statements that "there is no government which tends so strongly and constantly to change its form as the democratic, nor which demands more vigilance and courage for its maintenance" and that "it is against the natural order of things that the majority should govern and the minority be governed."

The vice of all these intra-corporate organizations lies in the separation of the interest of the voter from the advantage of the whole body. By this separation the basis of democratic government is destroyed, the controlling organization votes in its own interest, often at the expense of the state, and all but the governing faction are as effectually deprived of participation as though forbidden to vote. This Mr. Cushing seems to admit, for he says, "the objection that a voting trust may produce results prejudicial to the holders of the

minority interest has been met in the later voting trust agreements by the specific provision that any stockholder might subject his shares to the trust" (p. 129). Surely the conflict between voting trusts and the statute under which the corporation is organized must appear when the shareholder is compelled to surrender his vote in order to secure equal participation in corporate benefits — though it is not very clear that even surrender would accomplish this result. At this point corporate democracy gives place to a new form of oligarchy. The evolution may be necessary. We have certainly traveled some distance in this direction, and it may be as Mr. Cushing says, that a voting trust has the advantage of providing an open, responsible management in place of less responsible organizations.

E. PARMALEE PRENTICE.

THE COLLECTED PAPERS OF JOHN WESTLAKE ON PUBLIC INTERNATIONAL LAW. Edited by L. Oppenheim. Cambridge: University Press. 1914. pp. xxix, 705.

The first part of this book, two hundred and eighty-two pages, contains a reprint of Professor Westlake's "Chapters on the Principles of International Law," which was first issued in 1894. The second part, nearly four hundred pages, contains the miscellaneous writings of Professor Westlake on international law.

While the definition of international law as "the science of what a state and its subjects *ought to do* or *may do* with reference to other states and their subjects" might not commend itself, the papers of Professor Westlake generally treat of what states and their subjects *actually do* with reference to other states and their subjects. His contact with affairs, moreover, tended to give a positiveness and incisiveness to his work.

The collected papers cover a period of more than fifty years, from 1851 to 1913. The first paper, presented in the Transactions of the Juridical Society, is upon the "Relations between Public and Private International Law," which furnishes an excellent résumé of the opinion sixty years ago. The chapter on commercial blockade assumes a much more radical position than has been acceptable to Great Britain, particularly in the twentieth century. The paper, "It is Desirable to Prohibit the Export of Contraband of War?" though written in 1870, gives ample support to the recent contentions of the United States, stating that to change a rule during hostilities "would be a clear breach of neutrality." Westlake's lecture on International Law on assuming the Whewell professorship in 1888 is conservative and seems scarcely to embody the positiveness of view which he later held. The chapter on the "Transvaal War," 1899, is an excellent presentation of the British case. When read with the present British attitude in mind, the pages written in 1899 on "Continuous Voyage in Relation to Contraband" show how far Great Britain has now departed from accepted opinion of a few years ago. The important chapter on "Title by Conquest" follows in the main the continental doctrine of succession. Some of the same principles recur in the chapter on the "South African Railway Case." Westlake takes the affirmative position in the chapter "Is International Law a Part of the Law of England?" There are papers on the Contraband of War, the Muscat Dhows, the Hague Conference, Holland and Venezuela, and the Pacific Blockade. There is a long chapter on the Declaration of London, which he calls "the greatest step yet made in the systematic improvement of international relations." The practical mind of Westlake is evident in the chapters on "Reprisals and War" and "Belligerent Rights at Sea." He realized that for a time at least states at war would be inclined to use against an enemy such resources as might be available.